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LAPD immigration enforcement procedures

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OFFICE OF THE CHIEF OF POLICE

NOTICE

December 29, 2017

1.14

TO: All Department Personnel

FROM: Chief of Police

SUBJECT: IMMIGRATION ENFORCEMENT PROCEDURES

PURPOSE

The purpose of this Notice is to set forth Department procedures to comply with the California Values Act (CVA or SB 54), effective January 1, 2018, and additional procedural requirements to protect the public through community partnerships and adherence to the law regarding immigration enforcement.

PRINCIPLES

The Los Angeles Police Department is committed to protecting the public from crime and other harms through collaborative partnerships and constitutional policing principles including the fair and impartial enforcement of the law regardless of a person's race, ethnicity, national origin, or civil immigration status.

DEPARTMENT OBLIGATIONS AND CIVIL IMMIGRATION ENFORCEMENT

The LAPD as a local law enforcement agency is responsible for enforcing state and local criminal laws. It is neither authorized nor responsible for the enforcement of civil immigration laws or regulations.

The Congress of the United States has vested United States Immigration and Customs Enforcement (US-ICE) and United States Customs and Border Protection (US-CBP) with the legal authority and responsibility for enforcing civil immigration laws including status violations and removal proceedings. Therefore, Department personnel must abide by the limitations in legal authority and responsibility for enforcing federal civil immigration laws.

The CVA, other state laws, and existing Department policies and practices provide procedural protections to ensure that Department personnel do not go beyond existing legal authorities or contradict the Department's steadfast commitment to community and constitutional policing principles.

PROCEDURES

Set forth below are procedures regarding immigration enforcement that reflect existing Department policies and practices, new provisions of state law, and additional requirements during field, custodial, task force, and non-task force operations.

FIELD OPERATIONS

Detentions, Arrests, Interviews, and Victim Assistance

Federal and state law prohibit a police officer from detaining an individual based on the person's civil immigration status or, with limited exceptions, making a misdemeanor criminal arrest for an offense that did not occur in the officer's presence.

The provisions codified in Department Manual Section 4/264.50 by Special Order No. 40, 1979, continue to remain in effect. Accordingly, Department personnel shall not:

- Initiate police action with the objective of discovering the civil immigration status of any person; or,
- Arrest an individual for the federal misdemeanor offense of 8 U.S.C. § 1325, Improper Entry.

The CVA expands the restrictions set forth in Special Order No. 40, 1979, but reflects the Department's existing practice of not interrogating individuals regarding their civil immigration status (Cal. Gov. Code § 7284, et seq.). Therefore, Department personnel shall not:

- Investigate, interrogate, detain, or arrest a person for civil immigration purposes; or,
- Inquire into an individual's civil immigration status.

Exceptions: Crime or Trafficking Victim - Visa Applications (U and T Visas). State law does not prohibit inquiring into information necessary to certify an individual who may be a crime or trafficking victim and potentially eligible for a U or T Visa under federal immigration laws (Cal. Gov. Code § 7284.6(b)(4)). It is not necessary, however, to record the immigration status of the individual on the certification form or in Department records.

Accordingly, Department personnel shall not inquire about, or record, a person's civil immigration status unless, under the particular circumstances, it is necessary to:

- Provide victim services such as T or U Visa information or certifications;
- Investigate a criminal offense (e.g., sexual exploitation, trafficking, involuntary servitude, extortion, etc.); or,
- Otherwise required by law.

Criminal Immigration Offenses

Federal Criminal Arrest Warrants. Department personnel shall continue to honor arrest warrants issued by federal district court or magistrate judges for criminal offenses including arrest warrants for federal immigration crimes.

Temporary Detentions for Illegal Reentry Criminal Offenses. Officers may detain for investigation, based on reasonable suspicion, a person suspected of violating 8 U.S.C. § 1326(a), (b)(2), Illegal Reentry after Conviction of an Aggravated Felony, a felony immigration offense, under the following circumstances:

- The person was initially contacted by Department personnel for reasons unrelated to immigration enforcement;
- The person is reasonably suspected of having a prior conviction for an “aggravated felony” under federal law;¹
- The purpose of the detention is to determine if the prior conviction for an aggravated felony is also classified as a “serious or violent felony” as defined in California Penal Code §§ 1192.7(c) and 667.5(c);² and,
- The person is not a victim of, or a witness to, a crime or can otherwise provide evidence in a criminal investigation.

Release Requirement. Department personnel shall release the person if, during the detention, it is determined that the prior felony conviction is neither a serious nor violent felony under California law and the person is not otherwise subject to arrest or detention based on a non-immigration local, state or federal offense.

Approval Required Prior to Arrest or Transfer. Prior to conducting a probable cause arrest for a violation of 8 U.S.C. § 1326(a), (b)(2), or transferring a suspect to federal authorities such as US-ICE or US-CBP based on a probable cause arrest for 8 U.S.C. § 1326(a), (b)(2), Department personnel shall obtain approval from the Department’s Immigration Liaison Officer appointed by the Chief of Police.

¹ Aggravated felonies are defined under federal law and a prior conviction for an aggravated felony is typically noted on a National Crime Information Center notice regarding a suspect.

² See Appendix for a list of serious and violent felonies under California law.

Place of Birth Inquiries

Some members of the public may misperceive the purpose of inquiring about a person's birthplace when questioned during a law enforcement contact, especially when contacting the police as a victim or witness. To minimize the potential misperception and possible degradation of public trust, the following procedures shall take effect:

- **Victims, Witnesses and Temporarily-Detained Suspects.** Officers shall not ask a victim, witness, or temporarily-detained individual for his or her place of birth unless necessary under the particular circumstances to investigate a criminal offense.
- **Arrestees.** Department personnel may ask and record an arrestee's place of birth when it is:
 - * Necessary to book or process the arrestee for a criminal offense;
 - * Necessary to comply with consular notification obligations,
 - * Necessary to investigate a criminal offense; or,
 - * Otherwise required by law.
- **Field Interview Cards.** Department personnel shall no longer record a victim, witness or temporarily detained individual's place of birth on Field Interview Cards, Form 15.43.00, unless an exception set forth above applies.
 - * **Reprinting of Field Interview Cards** - Policies and Procedures Division is directed to, as soon as reasonably practicable, remove and replace the existing stock of Field Interview Cards with a redesigned form that no longer includes the birthplace field.
 - * Department personnel, however, may continue to record an arrestee's place of birth on Field Interview Cards, in the "Additional Info" field, subject to the conditions set forth above.

CUSTODIAL OPERATIONS

Consular Notifications

Department personnel shall continue following the procedures set forth in Special Order No. 21, 2013, to comply with federal law and the Vienna Convention on Consular Relations obligations.

Civil Immigration Detainer Requests

Department personnel shall not detain an individual based on a US-ICE Detainer Request without a judicial probable cause determination or judicial warrant that authorizes a law enforcement officer to arrest and take into custody the individual for a federal criminal immigration offense or other crime.

ICE Notification of Release and Information Requests

Public Information. Department personnel shall provide arrestee information to US-ICE or US-CBP only as required under:

- The California Public Records Act (CPRA); and,
- Federal law under 8 U.S.C. § 1373, which prohibits any Department policy that restricts Department personnel from sending information regarding citizenship or immigration status, lawful or unlawful, of any individual to the U.S. Department of Homeland Security or US-ICE.

Custody Services Division, in coordination with Policies and Procedures Division, shall issue a Divisional Order specifying the information subject to release under the CPRA and federal law.

Non-Public Information. Department personnel shall not disclose non-public information regarding an arrestee, including an arrestee's home or work address, except as required by federal law under 8 U.S.C. § 1373.

ICE Access to Jails for Custodial Transfers. Department personnel shall not permit US-ICE agents access to Department jail facilities to transfer arrestees except:

- To transfer custody pursuant to a judicial warrant or judicial probable cause determination for a criminal offense that authorizes a law enforcement officer to arrest and take into custody the individual for a federal criminal immigration offense; or,
- To transfer custody of an arrestee for violating 8 U.S.C. § 1326(a), (b)(2), Illegal Reentry after Conviction of an Aggravated Felony, where the prior conviction is classified as a serious or violent felony, as defined in California Penal Code §§ 1192.7(c) and 667.5(c).

As set forth above, the Department's Immigration Liaison Officer must approve any transfer of an arrestee to federal authorities for a criminal immigration offense that does not involve a judicial probable cause determination or judicially issued criminal arrest warrant.

ICE Access to Jails for Interviews of Arrestees. Custody Services Division personnel shall continue to comply with Custody Services Division Order No. 1 – Revised, April 3, 2017, and allow US-ICE agents access to Department jail facilities to interview an arrestee if the individual consents to the interview after full advisement of his or her rights, including the arrestee's right to an attorney, in writing, and in accordance with the California TRUTH Act.

JOINT TASK FORCE PARTICIPATION AND OPERATIONS

Restricted Purpose

Department personnel shall not participate in a joint law enforcement task force where the primary or direct purpose is to enforce civil immigration laws or when participation in the task force violates local law or policy. Department personnel may participate in joint task forces with US-ICE or US-CBP membership where the purpose of the task force is to investigate violations of local, state or federal criminal laws unrelated to immigration enforcement.

Requirements to Comply with LAPD Policies and Procedures

Memoranda of Understanding for Joint Task Forces. All memoranda of understanding (MOUs) entered into after issuance of this Notice for joint law enforcement task forces involving US-ICE or US-CBP shall include a provision indicating that LAPD participants must comply with LAPD policies and procedures regarding immigration enforcement during their participation in any task force activity.

All MOUs entered into after the issuance of this Notice for joint task forces involving US-ICE or US-CBP shall include provisions that Department personnel will not participate in, or assist with, civil immigration enforcement and, if deputized as a federal task force officer, Department personnel will not accept any legal authority to enforce civil immigration offenses.

Joint task force MOUs shall be reviewed and approved by the Director, Office of Constitutional Policing and Policy.

Task Force Officer Acknowledgment Requirement. All Department personnel shall sign an acknowledgment of LAPD policies and procedures regarding immigration enforcement prior to participation as a task force officer.

Task Force Operations. Department personnel may participate in joint task force operations, such as execution of criminal search or arrest warrants, interviewing witnesses, or other criminal investigative activities, involving US-ICE or US-CBP when execution of the operation will not involve civil immigration enforcement by any participant.

Non-Task Force Joint Operations. Department personnel may participate in non-task force joint operations, such as execution of criminal search or arrest warrants, interviewing witnesses, or other criminal investigative activities, involving US-ICE or US-CBP when:

- Execution of the operation will not involve civil immigration enforcement by any participant;
- A tactical or operational plan identifies all agencies to be involved in the execution of the joint operation: and,
- The joint operation is approved by the corresponding Director for the Office of Operations or Office of Special Operations.

REPORTING REQUIREMENTS

Task Force Reporting Requirements

The Office of Operations and Office of Special Operations shall prepare and submit reports to the Board of Police Commissioners and the California Department of Justice as required in Cal. Gov. Code § 7284.6(c) regarding joint task force operations. For each task force in which Department personnel participate, the report shall include:

- The purpose of each task force;
- The federal, state and local law enforcement agencies involved;
- The number and type of arrests made during the reporting period; and,
- The number of people arrested for immigration enforcement purposes.

Additional Reports Regarding Immigration Enforcement and Department Operations

The Office of Operations and Office of Special Operations shall submit semi-annual reports to the Chief of Police and the Board of Police Commissioners regarding Department involvement in immigration-related activities with US-ICE and US-CBP with the following information:

- **Non-Task Force Joint Operations:** The purpose of each joint operation; the number of arrests made during the reporting period and the number of people arrested for immigration enforcement purposes.
- **Criminal Immigration Enforcement Actions:** The number of people arrested by Department personnel for criminal immigration enforcement purposes pursuant to a judicial warrant or judicial probable cause determination and the number of people arrested for violation of 8 U.S.C. § 1326(a), (b)(2), Illegal Reentry after Conviction of an Aggravated Felony.
- **US-ICE Transfers:** The number of transfers to US-ICE and the offense that allowed for the transfer.
- **US-ICE Detainer Requests:** The number of US-ICE Detainer Requests received and the number of US-ICE Detainer Requests honored.
- **US-ICE Interview Requests:** The number of US-ICE Interview Requests received and the number of US-ICE Interview Requests honored.
- **US-ICE Release Notification Requests:** The number of US-ICE Release Notification Requests received and the number of US-ICE Release Notification Requests honored.

OBLIGATIONS UNDER FEDERAL LAW - (8 U.S.C. § 1373)

Nothing in this Notice, nor any other Department policy or procedure, shall prohibit or in any way restrict the LAPD and Department personnel from sending to, or receiving from, the U.S. Department of Homeland Security or US-ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

Therefore, Department personnel are not restricted from (1) sending the immigration status, lawful or unlawful, of any individual to, or requesting or receiving such information from, the U.S. Department of Homeland Security or US-ICE; (2) maintaining the immigration status, lawful or unlawful, of any individual; or, (3) exchanging the immigration status, lawful or unlawful, of any individual with any other Federal, State, or local government entity.

NOTE: As set forth above, Department personnel shall not inquire into an individual's citizenship or civil immigration status, nor record an individual's citizenship or immigration status, except as permitted by this Notice.

FURTHER IMPLEMENTATION

Department commands shall incorporate these procedures into divisional manuals and other procedural instructions as needed.

Should you have any questions regarding this Notice, please contact the Office of Constitutional Policing and Policy at (213) 486-8730.

A handwritten signature in black ink, appearing to read 'C Beck', with a stylized, cursive script.

CHARLIE BECK
Chief of Police

Attachment

DISTRIBUTION "D"

APPENDIX

Serious Felonies (Cal. Penal Code § 1192.7(c))

Murder or voluntary manslaughter
Mayhem
Rape
Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
Lewd or lascivious act on a child under 14 years of age
Any felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm
Attempted murder
Assault with intent to commit rape or robbery
Assault with a deadly weapon or instrument on a peace officer
Assault by a life prisoner on a non-inmate
Assault with a deadly weapon by an inmate
Arson
Exploding a destructive device or any explosive with intent to injure
Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem
Exploding a destructive device or any explosive with intent to murder
Any burglary of the first degree
Robbery or bank robbery
Kidnapping
Holding of a hostage by a person confined in a state prison
Attempt to commit a felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant personally used a dangerous or deadly weapon

Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code

Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person

Grand theft involving a firearm

Carjacking

Any felony offense, which would also constitute a felony violation of Section 186.22

Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220

Throwing acid or flammable substances, in violation of Section 244

Assault with a deadly weapon, firearm, machine gun, assault weapon, or semi-automatic firearm or assault on a peace officer or firefighter, in violation of Section 245

Assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5

Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246

Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1

Continuous sexual abuse of a child, in violation of Section 288.5

Shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100

Intimidation of victims or witnesses, in violation of Section 136.1

Criminal threats, in violation of Section 422

Any attempt to commit a crime listed in this subdivision other than an assault

Any violation of Section 12022.53

A violation of subdivision (b) or (c) of Section 11418

Any conspiracy to commit an offense described in this subdivision.

Violent Felonies (Cal. Penal Code § 667.5(c))

Murder or voluntary manslaughter
Mayhem
Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262
Sodomy as defined in subdivision (c) or (d) of Section 286
Oral copulation as defined in subdivision (c) or (d) of Section 288a
Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288
Any felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55
Any robbery
Arson, in violation of subdivision (a) or (b) of Section 451
Sexual penetration as defined in subdivision (a) or (j) of Section 289
Attempted murder
A violation of Section 18745, 18750, or 18755
Kidnapping
Assault with the intent to commit a specified felony, in violation of Section 220
Continuous sexual abuse of a child, in violation of Section 288.5
Carjacking, as defined in subdivision (a) of Section 215
Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1
Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22
Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22
Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary
Any violation of Section 12022.53
A violation of subdivision (b) or (c) of Section 11418